

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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<b>THOMAS &amp; MARKER</b>	)	
<b>CONSTRUCTION CO.,</b>	)	<b>Case No. 3:06-cv-406</b>
<b>Plaintiff,</b>	)	
	)	<b>Judge Thomas M. Rose</b>
<b>v.</b>	)	
<b>WAL-MART STORES, INC., et al.,</b>	)	
<b>Defendants.</b>	)	

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**ORDER**

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This matter came to be heard upon the joint motion of the parties pursuant to Fed. R. Cir P. 60(b), as contemplated in *First National Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343 (6th Cir. 1976), asking this Court to vacate (1) this Court's judgment of January 15, 2009 (Doc. No. 211), and (2) its Opinion and Order, and corresponding judgment, of April 27, 2009 (Doc. No. 231). In accordance with their agreement, the parties also ask the Court to deny Thomas & Marker's pending motion for attorney fees (Doc. No. 241) as moot, and dismiss all claims and counterclaims with prejudice.

Considering the parties' desire to settle and the entire record, the Court is of the opinion, and so finds, that should the case be remanded to it by the U.S. Court of Appeals for the Sixth Circuit, this Court is inclined to grant the relief requested.

**IT IS THEREFORE ORDERED BY THE COURT** that the stay entered on July 6, 2009 is lifted;

**IT IS FURTHER ORDERED** that, if this case is remanded to this Court by the Court of Appeals, this Court is disposed to grant the parties' 60(b) motion; and

**IT IS FURTHER ORDERED** that the case be continued, and all briefing deadlines suspended, pending remand by the Sixth Circuit.

ENTERED this Twenty-Eighth day of July, 2009.

**s/Thomas M. Rose**

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Thomas M. Rose  
United States District Judge